

REMARKS

Claims 15 to 17 are added, and therefore claims 8 to 17 are pending in the present application.

In view of the following, it is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is respectfully requested.

Applicant thanks the Examiner for acknowledging the claim for foreign priority and for indicating that all of the certified copies of the priority documents have been received.

As to paragraph two (2) of the Office Action, claims 8 to 10 and 12 to 14 were rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 6,300,866 (the "Foith" reference).

As regards the anticipation rejections of the claims, to reject a claim under 35 U.S.C. § 102(b), the Office must demonstrate that each and every claim feature is identically described or contained in a single prior art reference. (*See Scripps Clinic & Research Foundation v. Genentech, Inc.*, 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991)). As explained herein, it is respectfully submitted that the Office Action does not meet this standard, for example, as to all of the features of the claims. Still further, not only must each of the claim features be identically described, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed subject matter. (*See Akzo, N.V. v. U.S.I.T.C.*, 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986)).

As further regards the anticipation rejections, to the extent that the Office Action may be relying on the inherency doctrine, it is respectfully submitted that to rely on inherency, the Office must provide a "basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics *necessarily* flows from the teachings of the applied art." (*See* M.P.E.P. § 2112; emphasis in original; and *see Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Int'f. 1990)). Thus, the M.P.E.P. and the case law make clear that simply because a certain result or characteristic may occur in the prior art does not establish the inherency of that result or characteristic.

Claim 8 relates to a device for activating a personal protection device, and provides that an activating arrangement activates the personal protection device as a *function*

of a delay between a first signal from an impact sensor system situated in a front of a vehicle and a second signal from a centrally located acceleration sensor system, the first and second signals each identifying an impact.

As to columns 1, lines 36 to col. 2, line 6 of the “Foith” reference, the “Foith” reference does not identically disclose (or suggest) the feature of a personal protection device is activated *as a function of a delay between a first signal from an impact sensor system situated in a front of a vehicle and a second signal from a centrally located acceleration sensor system*, as provided for in the context of the claimed subject matter. In fact, the “Foith” reference only mentions a *delay* (see Foith, col. 1, line 47) in commenting about a disadvantage of the prior art. In the presently claimed subject matter, however, the *delay* is used advantageously to activate a personal protection device, and also, for example, to provide information about the crash sequence and the crash partner.

Further, the “Foith” reference concerns determining the severity of a vehicle collision *as a function of the movement of the sensor locations relative to the system of coordinates*-- and is not as a function of a *delay between two signals* that are transmitted from different locations in an automobile, and therefore does not identically disclose (or suggest) this feature of the presently claimed subject matter.

Also, the “Foith” reference does not identically disclose (or suggest) the feature of *activating a personal protection device* as function of a delay, as provided for in the context of the presently claimed subject matter.

Accordingly, the “Foith” reference does not identically disclose (or even suggest) all of the features of claim 8, so that claim 8 is allowable as are its dependent claims 9, 10 and 12 to 14.

Withdrawal of the anticipation rejections of claims 8 to 10 and 12 to 14 is therefore respectfully requested.

Claim 11 was rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of the “Foith” reference and U.S. Patent No. 6,648,367 (the “Breed” reference).

To reject a claim as obvious under 35 U.S.C. § 103, the Office bears the initial burden of presenting a *prima facie* case of obviousness. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988).

This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

As clearly indicated by the Supreme Court, it is “important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements” in the manner claimed. *See KSR Int’l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007). In this regard, the Supreme Court further noted that “rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.*, at 1396. Second, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974). As explained herein, the Office Action does satisfy these requirements as to all of the features of the claims.

Claim 11 depends from claim 8, and therefore is allowable for at least the same reasons as claim 8, since the “Breed” reference does not cure the critical deficiencies of the “Foith” reference explained above as to claim 8.

As further regards claim 11, the “Breed” reference simply does not disclose nor suggest the feature of *determining a size of an impact object as a function of the delay*, as provided for in the context of the presently claimed subject matter. The “Breed” reference merely mentions *delay* with respect to airbag deployment, (i.e., delays) in the inflation of the airbag). It does not disclose a *delay between a first signal from an impact sensor system situated in a front of a vehicle and a second signal from a centrally located acceleration sensor system*, as provided for in the context of the presently claimed subject matter. Accordingly, claim 11 is also allowable for this further reason.

As further regards all of the obviousness rejections, any Official Notice is respectfully traversed to the extent that it is maintained and it is requested that the Examiner provide specific evidence to establish those assertions and/or contentions that may be supported by the Official Notices under 37 C.F.R. § 1.104(d)(2) or otherwise. In particular, it is respectfully requested that the Examiner provide an affidavit and/or that the Examiner provide published information concerning these assertions. This is because the § 103 rejections are apparently being based on assertions that draw on facts within the personal

Application Serial No. 10/582,181
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knowledge of the Examiner, since no support was provided for these otherwise conclusory and unsupported assertions. (See also MPEP § 2144.03).

Withdrawal of the obviousness rejection of claim 11 is therefore respectfully requested.

New claims 15 to 17 do not add any new subject matter and are supported by the present application, including the specification. Claims 15 to 17 depend from claim 8, and are therefore allowable for the same reasons as claim 8.

Accordingly, all of pending claims 8 to 17 are allowable.

CONCLUSION

In view of the foregoing, it is respectfully submitted that all of the presently pending claims are allowable. It is therefore respectfully requested that the rejections be withdrawn. Since all issues raised by the Examiner have been addressed, an early and favorable action on the merits is respectfully requested.

Respectfully submitted,
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